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[COMMITTEE PRINT]

83D CONGRESS
2d Session
HOUSE OF REPRESENTATIVES

ADMINISTRATIVE PRACTICES UNDER THE LABOR-MANAGEMENT RELATIONS ACT

INTERIM REPORT

OF A

SPECIAL SUBCOMMITTEE

TO THE

COMMITTEE ON EDUCATION AND LABOR

PURSUANT TO

H. Res. 115

A RESOLUTION AUTHORIZING THE COMMITTEE ON EDUCATION AND LABOR TO CONDUCT STUDIES AND INVESTIGATIONS RELATING TO MATTERS WITHIN ITS JURISDICTION

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II

ADMINISTRATIVE PRACTICES UNDER THE LABOR-MANAGEMENT RELATIONS ACT, 1947

PURPOSE AND SCOPE OF HEARING

On September 1, 1953, your subcommittee was directed to investigate allegations of improper administration and enforcement of the Labor-Management Relations Act of 1947 in and around Homedale, Idaho.[1]

Following these instructions, your subcommittee proceeded to Idaho, where, after a preliminary investigation, a public hearing was convened in the Canyon County Courthouse at Caldwell on September 15, 1953. In this hearing your subcommittee sought to examine the manner in which the National Labor Relations Board had handled a case involving the Homedale Tractor & Equipment Co.[2] of Homedale, Idaho.

Your chairman emphasized that this hearing was not one to "determine the facts" in the Homedale Tractor case.[3] Rather, he said, its objective was to see whether the NLRB and its General Counsel had been fair and impartial.[3]

To assist it in this limited legislative purpose, your subcommittee called a number of witnesses, including several employees of the National Labor Relations Board. The testimony of all witnesses was under oath.

TESTIMONY PRESENTED

Cyril W. Radcliffe[4] and Wilbur W. Mancke,[5] coowners of the Homedale Tractor & Equipment Co., testified to their dealings with agents of the National Labor Relations Board. So also did their attorney, Eli Weston,[6] of Boise, Idaho. The greater portion of this testimony for the company was given by Mr. Radcliffe. He discussed the holding of an NLRB representation election among his employees; also the NLRB's investigation and hearing of unfair labor practice charges against the firm. He detailed his dealings with NLRB field examiners Howard E. Hilbun and Julius N. Draznin and was sharply critical of their investigative procedures. He objected to their failure to contact him during their investigations. He objected to what he considered their unduly close association with officers of the union which sought to represent his employees. And he criticized the application, in his case, of NLRB rules covering the time within which an objection might be filed to the results of an election.

However, he singled out for special criticism the intermediate report of NLRB Trial Examiner Howard Myers. He accused Mr. Myers of

[1] Letter of Hon. Samuel K. McConnell, Jr., transcript p. 3.
[2] NLRB case No. 19-CA-542.
[3] Statement of Subcommittee Chairman Smith, transcript p. 1.
[4] Transcript p. 4.
[5] Transcript p. 35.
[6] Transcript p. 75.

ignoring the record,[7] and charged that in making his findings this trial examiner acted contrary to directions in the LMRA, 1947, that findings be based on "substantial evidence in the record." [8]

Your subcommittee heard the testimony of the two field examiners, Julius N. Draznin [9] and Howard E. Hilbun.[10] They were accompanied by Patrick H. Walker, chief law officer of the NLRB Seattle office.[11] Messrs. Hilbun and Draznin took issue with Mr. Radcliffe's account of their dealings with him. They asserted that their conduct at all times conformed to standards set by the NLRB. They claimed that they carefully followed approved agency procedures in all matters involving Mr. Radcliffe's company.

In summary, Mr. Hilbun contended that Mr. Radcliffe was not contacted because his attorney had for some years insisted that NLRB personnel deal directly with him, and not with his clients. Mr. Hilbun also said it was necessary that he be accompanied by a union officer in some instances, but insisted there was nothing improper in this, and emphasized that some of the information he needed in this case could not be readily obtained without the assistance of union officials. Mr. Draznin explained that he followed general instructions from superiors in the disputed measurement of the time allowed for filing objections to elections.

Trial Examiner Howard Myers was also called to testify. He was sworn and answered a few questions about his personal and professional background. However, he would not answer questions relating to the Homedale Tractor case. He said his refusal was based on a telegram [12] from Chairman Guy Farmer of the NLRB. This telegram, addressed to Examiner Myers at Boise, Idaho, read as follows:

> You are authorized to appear at hearings on Homedale Tractor case being conducted by subcommittee of House of Representatives Committee on Education and Labor, and to cooperate fully with said committee, subject, however, to the qualifications that you are not authorized by the Board to answer questions relating to the mental processes by which you resolved credibility issues or evaluated or drew inferences or reached conclusions from the evidence in your judicial capacity. Board position in respect to this matter is more fully stated in September 4 letter of Chairman Farmer to Chairman Smith of subcommittee.

The September 4 letter, referred to in the telegram, is printed in the hearing transcript,[13] and is not reproduced in this report. This letter stated that the Homedale Tractor case would soon be argued on appeal before the Ninth Circuit Court. It reminded your subcommittee that the circuit court is the "sole tribunal" to inquire into trial examiners' findings. It added that "defense and explanation" of these findings must be confined, and emphasized that "even the court" will not go beyond the hearing record.

From this, Chairman Farmer apparently concluded that your subcommittee should not be permitted to ask any questions that might touch upon the "mental processes" of Mr. Myers.

Trial Examiner Myers, following instructions from Chairman Farmer, refused to answer your subcommittee's questions.

[7] Transcript p. 33.
[8] Transcript p. 31.
[9] Transcript p. 53.
[10] Transcript p. 37.
[11] Transcript p. 2.
[12] Transcript p. 63.
[13] Transcript p. 64.

As a result, your subcommittee was prevented from adequately complying with your September 1 directive to investigate the administration and enforcement of the Labor-Management Relations Act of 1947 in and around Homedale, Idaho.

Conclusions

The investigation ordered in your letter of September 1 has not been completed. Responsibility for this fact rests squarely on the National Labor Relations Board and its Chairman.

The refusal of the NLRB to permit Trial Examiner Myers to answer your subcommittee's questions constitutes an improper interference with a proper function of Congress. The alleged "precedents" cited by Chairman Farmer in his September 4 letter [14] are wholly irrelevant. They consist of several Supreme Court decisions upholding the proposition that *courts* should not question the mental processes of jurors, examiners, and some other fact-finding officers. They have absolutely no bearing on the purpose for which your subcommittee convened this hearing.

Congress has the unquestioned right to seek information for legislative purposes. No clearer right exists in this field than the right of your committee to inquire into the administration and enforcement of the Labor-Management Relations Act of 1947. It should be made emphatically clear that no officer or employee of the National Labor Relations Board has, or should have, any right to refuse to testify before your committee on grounds such as those advanced by Chairman Farmer in his letter of September 4.

Recommendations

Your subcommittee recommends—

That your committee convene a hearing at an early date to complete the unfinished business of your subcommittee;

That Chairman Farmer and other responsible officials of the National Labor Relations Board be summoned to testify regarding the instructions which prevented Trial Examiner Myers from testifying before your subcommittee; and

That contempt of Congress proceedings be deferred until all appropriate National Labor Relations Board personnel have been given the opportunity to testify before your committee.

Wint Smith,
Albert H. Bosch,
Wingate H. Lucas,
Members of Congress.

[14] Transcript p. 64.

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